



**U.S. Department of Veterans Affairs**  
**Office of General Counsel**

**Torts Law Group (021)**  
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**In Reply Refer To: GCL 466715**

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March 2, 2021

Marc Pera, Esq.  
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1095 Nimitzview Drive, Ste 403  
Cincinnati, OH 45230

**RE: Administrative Tort Claim of James Geary**

Dear Mr. Pera:

The Department of Veterans Affairs (VA) has thoroughly investigated the facts and circumstances surrounding your client's administrative tort claim. Our adjudication of the claim included a review of Mr. Geary's medical records and a review of the claim by a medical reviewer.

The Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346(b) and 2671-2680, under which you filed the claim, provides for monetary compensation when a Government employee, acting within the scope of employment, injures another by a negligent or wrongful act or omission. Medical negligence means there was a breach in the standard of care and that breach proximately caused an injury. The standard of care is the level at which similarly qualified medical professionals would have managed the care under the same or similar circumstances. Our review concluded that there was no negligent or wrongful act on the part of an employee of the Department of Veterans Affairs (VA) acting within the scope of employment that caused compensable harm. Accordingly, we deny the claim.

If your client is dissatisfied with the denial of the claim, he may file suit directly under the FTCA, 28 U.S.C. §§ 1346(b) and 2671-2680. The FTCA provides that when an agency denies an administrative tort claim, the claimant may seek judicial relief in a Federal district court. The claimant must initiate the suit within six months of the mailing of this notice as shown by the date of this denial (28 U.S.C. § 2401(b)). In any lawsuit, the proper party defendant is the United States, not the Department of Veterans Affairs.

Please note that FTCA claims are governed by a combination of Federal and state laws. Some state laws may limit or bar a claim or lawsuit. VA attorneys handling FTCA claims work for the Federal government and cannot provide advice regarding the impact of state laws or state filing requirements.

Sincerely,

Cynthia Hernandez  
Deputy Chief Counsel

